No. 173.

FILED
SEP 14 1900
JAMES H. McKENNEY,
Clerk.

Motion to advance.

SUPREME COURT

OF THE UNITED STATES.

Filed Sept. 14, 1900.

OCTOBER TERM, 1900.

No. 173.

DULUTH AND IRON RANGE RAILROAD COMPANY,

Plaintiff in Error.

vs.

THE COUNTY OF ST. LOUIS,

Defendant in Error.

MOTION TO ADVANCE.

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No. 173.

DULUTH AND IRON RANGE RAILROAD COMPANY,

Plaintiff in Error.

vs.

THE COUNTY OF ST. LOUIS,

Defendant in Error.

The plaintiff and defendant in error will, on the first day of the October Term for the year 1900, move this Court to advance the above entitled cause, numbered 173, and have the said cause heard immediately after the hearing in the case of the State Ex Rel Marr v. Stearns, and state as the ground of said motion, the following facts:

That the questions involved in this case are similar to the questions involved in the Stearns case, and on the part of the State will be presented by

the Attorney General of Minnesota, who represents the State as one of the counsel in the Stearns case.

A brief statement of the facts will show the similarity of the questions involved. This is a proceeding to enforce delinquent taxes against the lands granted to the Duluth & Iron Range Railroad Company by the State of Minnesota. The lands were originally granted to the State by Congress. See 12 U. S. Statutes at Large, page 3, and 9 U. S. Statutes at Large, page 519. They are swamp lands situated in the counties of St. Louis, Lake and Cook, and were granted to the Duluth & Iron Range Railroad Company under an act passed March 9, 1875, Special Laws 1875, Chap. 54. This act in substance granted ten sections per mile for the construction of a railroad from Duluth to the iron mines at Tower, and contained the following provision:

"Provided, that none of the lands hereby granted shall be subject to taxation until the expiration of five years from the issuance of the patent by the State, unless previously sold or disposed of by said Railroad Company."

The Railroad Company constructed the road and completed it on or about December, 1886. On the 16th of May, 1884, the Railroad Company duly accepted an act of the legislature passed March 10, 1873, entitled "An Act providing for the collection of taxes from the St. Paul, Stillwater & Taylor's Falls Railroad Company," Special Laws of 1873, Chapter 3, page 302. This act in substance provided that in consideration of the annual payment of a per centum upon the gross earnings of the Tay-

lors' Falls Railroad, all its property and land grant should be forever exempt from any other taxation. The percentage provided for was a graded tax of one per cent for three years, two per cent for seven years, and three per cent forever thereafter.

Section 2 of the act authorized any other railroad company by resolution of its board of directors to accept the act, and thereafter it should pay taxes as therein provided.

The Duluth & Iron Range Railroad Company has always paid the taxes provided for by this act.

On March 9th, 1895, the legislature passed an act to tax all the lands of railroad companies except right-of-way, gravel pits, side tracks, depots, and all buildings and structures used in the management and operation of its road, as other lands are taxed. This is the act involved in the Stearns case. Under this act the lands of the Duluth & Iron Range Railroad Company were taxed within five years from the time they were conveyed to the company; the company filed its answer, trial was had in the District Court of St. Louis County, and findings of fact made. See Record, pages 51 to 55 inclusive. Appeal was taken to the Supreme Court of the State, which court sustained the validity of the law on the authority of State Ex Rel Marr v. Stearns, 72 Minn., page 200. From this final judgment a writ of error was sued out to this court. The opinion will be found on pages 60 and 61 of the Record.

The defense set up and relied on in the state court was, that the act of 1895, taxing the lands of the Duluth & Iron Range Railroad Company, impaired

the obligation of the contract contained in its grant and in the Taylor's Falls act. The Supreme Court held against the contention of the plaintiff in error. This case involves, therefore, the taxation of the land grant of the Iron Range Railroad Company, and is a case of public importance to the State of Minnesota and to the plaintiff in error.

The total amount of the swamp land grant to the plaintiff in error is about 606,000 acres; the amount already deeded to the company is about 300,000 acres, so that on all of this land one year's taxes have been levied, and on a large part of it three years' taxes have been levied, and a part of these taxes are now delinquent. Under the laws of Minnesota taxes are delinquent on June 1st, at which time ten per cent penalty is added; on the following January five per cent additional penalty, and after judgment for delinquent taxes one per cent a month interest, so that it will be seen that if these taxes are valid, a large amount of the state's revenue is tied up and involved in this litigation, and the interest and penalties, together with the cost for the entry of judgment on each separate piece of land will amount to a large sum of money.

As the case involves substantially the same questions as the case of State v. Stearns, and as that case is to be re-argued in the early part of the October Term of this Court, your petitioners respectfully submit that it will facilitate the arguments and disposition of this case to have it heard at the same time; and also respectfully submit that the case is one involving the revenue of the state and

of great public interest, and should be as speedily determined as the business of this court will reasonably permit.

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